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Remarks

In the Final Office Action mailed September 25, 2002, claims 1-56 are pending in the application. Claims 6, 7, 16-19, 30, 31, 36-39, 42, 44 and 48 are withdrawn from consideration. Claims 1-5, 8-15, 20-29, 32-35, 40-41, 43, 45-47 and 49-56 are rejected.

1. Rejection of Claims as Obvious Over Krzysik in View of Beerse

In the Final Office Action mailed September 25, 2002, the Examiner rejects claims 1-5, 8-15, 20-29, 32-35, 40, 41, 43, 45-47 and 49-56 as being unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,149,934 issued to Krzysik et al. (hereinafter "the Krzysik patent") in view of U.S. Patent No. 6,294,186 to Beerse et al. (hereinafter "the Beerse patent"). Applicants maintain that a *prima facie* case of obviousness has not been established because, among other reasons, the Examiner has improperly cobbled individual elements of the two cited references together using the present application to perform hindsight reconstruction.

In the Final Office Action mailed September 25, 2002, the Examiner renews her grounds for rejection stated in the first Office Action mailed March 27, 2002. In addition, the Examiner responds to the remarks made in Applicants' Amendment submitted on July 15, 2002. In response to Applicants' argument that one of ordinary skill in the art would not have been motivated to add the thickening agents and skin moisturizing agents of the Beerse patent in view of the large number of groups of compounds disclosed in the Beerse patent, the Examiner believes the Beerse patent provides a reason in column 10 to add thickening agent and moisturizing agent to a lotion composition. Therefore, the Examiner believes the motivation to combine the two references is provided by the Beerse patent. With respect to Applicants' argument that no motivation for picking elements from the Beerse patent is identified, the Examiner believes the Beerse patent provides motivation for adding a skin moisturizing agent into a composition. The Examiner also believes the Beerse patent provides a list of suitable materials that can be used as skin moisturizing agents, therefore disclosing that a suitable skin moisturizing agent is a sterol, such as cholesterol. Further, with respect to Applicants' argument that it would be undesirable to use an antiviral/antibacterial composition to improve skin health, the Examiner believes it is well known in the art to use antibacterial materials on topsheets in contact with user's skin. The Examiner indicated that a subclass of art has been devoted to the use of antibacterial material on topsheets or in contact with a user's skin in diapers or other absorbent articles.

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In addition to reiterating the arguments made in the Amendment submitted on July 15, 2002, Applicants offer the following additional remarks in response to the Examiner's final rejection of claims 1-5, 8-15, 20-29, 32-35, 40, 41, 43, 45-47 and 49-56. Applicants continue to believe that there is no suggestion or motivation to combine the particular bits selected by the Examiner from the Beerse patent with the disclosure of the Krzysik patent. The motivation to modify the Krzysik patent must flow from some teaching in the Beerse patent that suggests the desirability or incentive to make the modification needed to arrive at the invention claimed in the present application. Further, the requisite motivation must come from the Beerse patent, not Applicants' specification. Using Applicants' disclosure as a blueprint to reconstruct the claimed invention from isolated pieces of the Beerse patents contravenes the statutory mandate of section 103 of judging obviousness at the point in time when the invention was made.

The Examiner believes disclosure in column 10 of the Beerse patent provides motivation for adding a thickening agent and a moisturizing agent to a lotion composition to be applied to an absorbent article. Applicants have reviewed columns 10 and 11 of the Beerse patent. Columns 10-11 do not contain the requisite motivation or suggestion to select particular compounds from the dozens disclosed for use in a composition for an absorbent article. Further, the Examiner has not identified why one of ordinary skill in the art would have been motivated to pick out specific "thickening"/"moisturizing" agents and to also pick out an additional "thickening agent", such as a polysaccharide or a polyacrylamide from the Beerse patent for use on an absorbent article. The Beerse patent discloses antimicrobial compositions that provide enhanced immediate as well as residual anti-viral and antibacterial efficacy. From the hundreds, perhaps thousands, of ingredients disclosed in the Beerse patent, the Examiner selected polysaccharides and polyacrylamide polymers that are identified as "thickening agents" in the Beerse patent. The Examiner has not identified why one of ordinary skill in the art would have selected polysaccharides/polyacrylamide polymers from the Beerse patent.

Any argument that one of ordinary skill in the art would have been motivated to combine the disclosure of the Beerse patent with the Krzysik patent is further undermined by the Beerse patent disclosing use of the described compositions in chewing gum, cough drops, mouthwash, hard surface cleaners, laundry detergents, floor waxes, etc. (See Col. 9, lines 4-27). Therefore, one of ordinary skill in the art would have had to pick out specific

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"thickening agents" and a specific product form from the wide variety disclosed in the Beerse patent. The Examiner fails to identify both the motivation for making such selections and the motivation for combining such selections with the disclosure of the Krzysik patent. For these reasons and the reasons set forth in the Amendment submitted on July 15, 2002, the Applicants submit that claims 1-5, 8-15, 20-29, 32-35, 40, 41, 43, 45-47 and 49-56 are patentable over the Krzysik patent in view of the Beerse patent.

In conclusion, and in view of the remarks set forth above, Applicants respectfully submit that the application and the claims are in condition for allowance and respectfully request favorable consideration and the timely allowance of pending claims 1-5, 8-15, 20-29, 32-35, 40, 41, 43, 45-47 and 49-56. If any additional information is required, the Examiner is invited to contact the undersigned at 920-721-2433.

The Commissioner is hereby authorized to charge any prosecutorial fees (or credit any overpayment) associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such extension is requested and should also be charged to our Deposit Account. A duplicate of this sheet is provided.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 920-721-2433.

Respectfully submitted,

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